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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,748	06/29/2001	Gary B. Robinson	16113-1342RE2	3348
26192	7590	11/24/2010		
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER RETTA, YEHDEGA	
			ART UNIT 3622	PAPER NUMBER
			NOTIFICATION DATE 11/24/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/893,748	<b>Applicant(s)</b> ROBINSON, GARY B.
	<b>Examiner</b> Yehdega Retta	<b>Art Unit</b> 3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

1) Responsive to communication(s) filed on 18 October 2010.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 26-37,39-41 and 48-50 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 26-37,39-41 and 48-50 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SCE/08)  
 Paper No(s)/Mail Date 10/18/10.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date: \_\_\_\_\_.

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

This office action is in response to amendment filed September 7, 2010. Applicant canceled claims 38, 42-47 and 51-52. Claims 1-37, 39-41 and 48-50 are currently pending.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-37, 39-41 and 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, B., An Open Architecture for Collaborative Filtering,"  
<ftp://ftp.cs.umn.edu/users/bmiller/prop.ps>, Univ Of Minn., Oct. 26, 1995, pp. 1-18, in view of Weinblatt (US 5,401,946) and further in view of Herz, (US 5,754,938).

Regarding claims 26, 27, 29-37, Miller teaches a method of receiving information based upon the activity of a user in an interactive medium (in Ringo user rates artists and create initial profile); determining a community for said user based upon said received information (collaborative filtering used to recommend CDs); and selecting an advertisement to be displayed to said user based upon the community (recommended CDs) (see page 7). Weinblatt teaches displaying a new advertisement for a training period, determining whether a high or low proportion of members a community have viewed further information about the advertisement (whether the viewers were exposed (see col. 3 lines 30-44, col. 4 lines 26-45, col. 12 lines 60-

66). It would have been obvious to one of ordinary skill in the art at the time of the invention to monitor the advertisement displayed in Miller in order to determine the effectiveness of the advertisement, as taught in Weinblatt (see col. 12 lines 60 to col. 13 line 23).

Both Miller and Hertz discloses a method wherein the information includes the nature of the content; an identity of one or more sites the user has visited (see Miller (pp 7-8 and Herz Col. 17 lines 15-65 pages viewed); a frequency with which the subject visits each of the one or more sites (Col. 68 lines 52-56); a nature of the information content at the visited sites (see Miller pp 7-8, Herz col.10 line 55 to Col. 11 line 50); an identity of items purchased by the subject (Col. 17 lines 15-65); a price of any items purchased by the subject (Col. 17 lines 15-65); ratings supplied by the subject (see Miller pp 7-8, Col. 17 lines 15 to Col. 18 line 12 user's manual adjustment of passive feedback score); a selection of advertisements the subject has chosen to view further information about (Col. 17 lines 15-65 with actual purchase as equivalent); a selection of advertisements in which the subject has indicated disinterest (Col. 17 lines 15-65 user indicates "active distaste"). Miller discloses a method further comprising the step of recording said information in a database (Fig. 2; p. 8 DBMS).

Miller discloses a method wherein the step of recording such information in a database uses at least a portion of a computer program being executed by a processor which the subject used to visit the sites (p. 7 xrn client).

Miller does not explicitly teach a method wherein the at least a portion of a computer program being executed by the processor which the subject used to visit the sites is selected from at least one of the following: an in-line application with the ability to write directly to the subject's computer, a screensaver working in conjunction with a

browser, and software incorporated in a browser. However, it would have been obvious to one of ordinary skill in the art at the time of the invention that Miller implicitly discloses this limitation. Although Miller only discusses a method for the collaborative filtering of news articles, Miller does explicitly suggest applying its techniques to additional Internet resource types such as Web pages (p. 16). Given this suggestion, a person of ordinary skill in the art at the time of the invention would have recognized that the program used to "visit the sites," in the case of a method for collaboratively filtering Web pages, would be a Web browser on the subject's computer instead of the news reader client described in Miller. Herz teaches a method wherein the step of determining which advertisements to show the user based on the subject's community includes the steps of associating a demographic profile with the community and with specific advertisements (Col. 20 lines 10-39). It would have been obvious to combine the teachings of Herz with the teachings of Miller to determine which advertisement to show a user based on demographic profiles because of Herz's explicit teaching that demographic information is useful in determining the similarity of users (Col. 20 lines 10-39).

Miller discloses a system wherein the means for determining which advertisements to show the subject based on characteristics of the subjects community is embodied in software being executed by a processing system used by the subject (Fig. 2; p. 8 prediction, where the Better Bit Bureau server is a processing system used by the subject).

Herz teaches a computer program product wherein the product further comprises computer readable program code means for recording the information in a tracking database stored locally at the guest's remote location (Col. 34 lines 36-43).

Herz teaches a computer program product further comprising computer program code means for displaying an advertisement chosen by the computer program code means for determining (Col. 6 1 lines 1-17).

Herz teaches storing information on a user computer information based upon activity of a user with an interactive medium (user requested access to files, the files are transmitted to the user's client processor which are stored before being displayed to the user) (see col. 41 lines 1-15); receiving by the user computer advertisement criteria and deciding by the user computer if an advertisement is to be shown (col. 54 lines 54 to col. 55 line 22).

***Response to Arguments***

Applicant's arguments with respect to claims 26-37, 39-41 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to claims 48 -50 have been fully considered but they are not persuasive.

Regarding claim 48, Applicant argues that Miller and Herz, alone or in combination, fail to disclose or suggest "sending a first advertisement to a user computer; receiving from said user computer an indication that the user rejects said first advertisement; and replacing said first advertisement with a second advertisement in response to said rejection indication received from said user," as recited in claim 48.

Herz teaches the filtering system uses the relevance feed back to refine its knowledge of the user's interests. Herz teaches that if the user (on-line user) provides feedback as to whether or not the target object really is of interest ... regardless of how the user feedback is computed it is stored long-term as part of the user's target profile (see col. 17 lines 14 to col. 18 line 33). Herz

also teaches presenting a list of articles to a user based on the profile and based on similarity to other users; monitoring which articles are read by the user; the computed measure of the article attractiveness used as a weighting function to adjust the user's profile to accurately reflect user's dynamically changing interests (see col. 58 line 20 to col. 59 line 15). Herz further teaches a user who buys an advertised product is deemed to have provided particularly high relevance feedback on that advertisement ... given a database of such relevance feedback is then used to match advertisements with those users who are most interested in them (see col. 60 line 56 to col. 61 line 17). The limitation " receiving **indication that the user rejected the advertisement**" is broad enough to include an indication that the user did not buy the advertised product or did not spend enough time reading the product or indicating that the user is not interested (feedback). Since the feedback is used to select next product to the user or other users the next recommended product is considered to replace product that is selected before the feedback is received.

Regarding claim 49 applicant argues that Miller and Herz fail to disclose or suggest "storing on a user computer information based upon the activity of at least one user in an interactive medium; receiving by said user computer advertisement criteria; and deciding by said user computer if an advertisement is to be shown at said user computer based upon said information and said advertisement criteria," as recited in claim 49. Examiner respectively disagree. Herz teaches storing information on a user computer information based upon activity of a user with an interactive medium (user requested access to files, the files are transmitted to the user's client processor which are stored before being displayed to the user) (see col. 41 lines 1-15); receiving by the user computer advertisement criteria and deciding by the user computer if an advertisement is to be shown (col. 54 lines 54 to col. 55 line 22). Examiner would like to

point out that the claim storing information based upon the activity of a user. However does not recite user-specific information or tracking data. Regarding Applicant argument about the feature “receiving advertisement criteria and deciding by the computer if an advertisement is to be shown”, Examiner points out that if an advertisement is sent to the client computer and received by the client computer, the client computer decides that the advertisement is to be displayed and if no advertisement is received by the client, the client then know that no advertisement is to be displayed. Therefore, receiving an advertisement by the client computer is considered that the client computer receives the advertisement and the advertisement criteria (which to display the advertisement).

***Allowable Subject Matter***

Claims 1-25 are allowable.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

YR  
/Yehdega Retta/  
Primary Examiner, Art Unit 3622